

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN SCHUTTER	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	NO. 07-3823
	:	
DAVID HERSKOWITZ and	:	
PHILIP BANKS	:	
	:	
Defendants	:	

ORDER

AND NOW, this 15th day of July, 2008, upon consideration of the “Motion to Withdraw as Counsel” filed by Frank J. Marcone, Esquire (“Marcone”), counsel for Defendant Philip Banks (“Banks”) (Doc. 139), and following upon argument heard from both Banks and Marcone and counsel for Plaintiff, Stephen Schutter (“Schutter”), **IT IS HEREBY ORDERED THAT:**

1. The Motion to Withdraw as Counsel is **DENIED** in that there was no substitute counsel prepared to enter an appearance on behalf of Banks as of July 11, 2008, the date of the hearing of this matter.

2. Upon considering the statements of Banks, however, as they concerned his lack of communication from Marcone regarding the procession of this case, particularly with respect to various recent orders of this Court pertaining to discovery and the dismissal of certain claims, however, the trial will be adjourned and is reset for **Wednesday, August 27, 2008 in Courtroom 3H**, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania, commencing at 9:30 a.m. The purpose of this adjournment is to give Banks the opportunity to secure substitute counsel.

3. The parties and counsel are advised, however, that this Court will be disposed to

vacate paragraph one of this Order and grant the Marcone motion to withdrawal if substitute counsel promptly enters his/her appearance and acknowledges that he/she will be prepared to proceed to trial commencing on Wednesday, August 27, 2008 and understands that the matter will proceed to trial only on the direct claims brought by Schutter against Banks; and understands that no further continuances will be granted; and further understands that the Court will entertain a motion by Schutter for the reimbursement of costs he has incurred related to this continuance.

4. The hearing initially scheduled pursuant to our order dated July 1, 2008 (Doc. 132) to determine why Defendant Banks should not be held in contempt and be compelled to reimburse plaintiff for his costs and such other relief as would be appropriate for his failure to comply with: (a) the Court's Order of May 7, 2008 compelling Banks to provide Plaintiff with discovery responses within ten days (Doc. 81) and (b) the Court's Order of May 29, 2008 compelling Banks to pay \$796.90 in reasonable attorneys fees and costs to Plaintiff by June 13, 2008 (Doc. 89) is rescheduled for **Friday, August 21, 2008 at 1:30 p.m. in Courtroom 3H.**

5. Banks shall also be prepared to Show Cause, **at the same time and place (August 21, 2008 at 1:30 p.m. in Courtroom 3H)**, why Herskowitz's "Motion for Sanctions Against Defendant Philip Banks for Failure to Comply With Court Order" of May 14, 2008 compelling Banks, by May 23, 2008, to provide full and complete interrogatory responses, signed by an attorney of record and in compliance with Fed.R.Civ.P. 26(g)(1) and compelling Banks to pay \$787.50 in reasonable attorneys fees and costs to Herskowitz (Doc. 86) should not be granted and why Herskowitz should not be entitled to extraordinary relief for having to bring this motion in response to the failure of Banks to comply with a direct order of this Court. The parties shall be prepared to argue the appropriateness of the proposed sanctions.

6. Given the representations made by Banks on the record as to his lack of knowledge regarding pertinent orders from this Court, it is further **ORDERED** that Marcone shall Show Cause, **at the same time and place (August 21, 2008 at 1:30 p.m. in Courtroom 3H)**, why he should not be held in contempt for whatever role he played in Banks' failure to comply with the orders referred to in paragraphs 4 and 5 above.

7. Plaintiff Stephen Schutter and Defendant Philip Banks are **ORDERED** to appear at this hearing. Counsel for David Herskowitz shall attend this hearing as well, to the extent that argument will be heard and, if needed, testimony shall be taken on his motion for sanctions. Marcone is also **ORDERED** to appear even if substitute counsel has been obtained in light of the show cause order set in paragraph 6 above.

8. The parties are further advised, and encouraged, to contact the Court if they feel that they would benefit from settlement discussions with the Court or another magistrate judge of this Court.

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE